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January 18, 1982

US EPA RECORDS CENTER REGION 5



515899

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The Honorable Paul A. Magnuson
Judge of the United States District Court
754 United States Courthouse
316 North Robert Street
St. Paul, Minnesota 55101

Re: U.S. v. Reilly Tar & Chemical Corp.
File No. Civ. 4-80-469

Dear Judge Magnuson:

At the hearing in the above matter held on January 15, 1982, I referred to a large, loose-leaf volume titled Regional Contingency Plans: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin (Region V). This volume is used by the Minnesota Pollution Control Agency Spills Unit. It contains information on the national, regional, and local level concerning response to discharges of oil and hazardous substances. You granted permission to submit excerpts from this volume in support of the plaintiffs' position that the National Contingency Plan concept does not address the specific details of responding to any particular kind of discharge, but instead provides procedures and lists of technical resources to be utilized in fashioning responses to discharges on a case-by-case basis.

While it is never easy to characterize what something is not, review of the 24-page Regional Oil and Hazardous Substances Pollution Contingency Plan ("Regional Plan") and its annexes shows that this document is of a very general nature. I have enclosed the full text of the Regional Plan, the List of Annexes, and the two Annexes which appear by their titles to be of a technical nature --- "10.00 Schedule of Chemical Agents" and "15.00 Technical Information." These Annexes are seven and six pages, respectively, and provide only descriptions of approved chemicals, definitions, and reference publications which may be useful in response activities. The Regional Plan is consistent with the plaintiffs' characterization of the National Contingency Plan.

In addition to the Regional Plan proper, the loose-leaf volume includes the existing National Contingency Plan as

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published in the Federal Register on May 14, 1979. The Federal Register publication contains two pages of explanatory comment which were not included in the codification of the Plan at 40 C.F.R. Part 1510 (1980). I have enclosed those two pages (44 Fed. Reg. 28,196-197) and would like to point out the fifth paragraph under the heading "C. Summary of Changes Made by Proposed Revisions":

5. Scientific Support Coordinators. The current Plan does not provide a mechanism for coordination between the On-Scene Coordinator (OSC) and the scientific community during spills. Such a mechanism is necessary in order to provide the OSC with sound scientific advice in orderly way, so that the OSC does not have to devote scarce time to a number of different scientists who are concerned about providing cleanup advice and conducting experiments during spill cleanup operations.

Section 1510.64(b) establishes a scientific support organization headed by Scientific Support Coordinators (SSCs) who are designated by EPA for inland spills and by NOAA for coastal area spills.

This paragraph reflects the need for case-by-case consultation with the scientific community. Such ad hoc consultation is basic to the National Contingency Plan concept and is in place of any effort to list exhaustively precise measures to be taken for specific kinds of discharges in particular locations.

Copies of the enclosed materials are being sent to counsel listed below and the complete volume can be made available for inspection on request.

Very truly yours,



STEPHEN SHAKMAN
Special Assistant
Attorney General

SS:mah

Enc.

cc: ~~Edward Schwartzbauer~~
Francis X. Hermann
Erica Dolgin
Allen Hinderaker